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BEFORE THE
Federal Communications Commission
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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 05-295
Table of Allotments,)
FM Broadcast Stations) RM-11280
(Cumberland, Kentucky;)
Weber City, Glade Spring and)
Marion, Virginia))

TO: Honorable Marlene H. Dortch
Secretary of the Commission

ATTN: Assistant Chief, Audio Division, Media Bureau

**COMMENTS IN SUPPORT OF
NOTICE OF PROPOSED RULEMAKING**

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January 9, 2006

JBL BROADCASTING, INC.

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SUMMARY

In these Comments, JBL Broadcasting, Inc. demonstrates that Weber City, Virginia is a community to which WVEK-FM may be licensed, and that a majority of the eight criteria of community independence stated in **Faye and Richard Tuck**, 3 FCC Rcd 5374 (1988) are satisfied. Therefore, the FCC should amend its table of allocations to permit the relocation of Channel 274 from Cumberland, Kentucky to Weber City, Virginia and the upgrade of Channel 274 to Class C3 status, while changing channel numbers of allocated channels at Marion and Glade Spring, Virginia.

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<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Cumberland, KY	274A	None
Glade Spring, VA	274A	263A
Marion, VA	230C, 263A, 278A	230C, 273A, 278A
Weber City, VA	None	274C3

In support whereof, the following is shown:

Preliminary Statement

1. JBL hereby incorporates by reference its "Petition for Rulemaking" filed with the Commission on May 26, 2005. JBL hereby restates its commitment that: (1) should the Commission grant the changes to the FM Table of Allotments proposed herein, it will promptly apply for a construction permit for Channel 274C3 at Weber City, Virginia; and (2) should that application be granted, JBL would then construct and operate the resulting Class C3 station at Weber City.

Updated "Tuck" Showing

2. At paragraph 3 and footnote 5 of the **NPRM**, the Commission called upon JBL to submit an updated showing pursuant to the eight factors stated in **Faye and Richard Tuck**, 3 FCC Rcd 5374 (1988).

3. These eight factors are: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own

telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

3. Overview. Weber City is an incorporated town located in Scott County in southwest Virginia. It is listed in the United States Census and had a 2000 Census population of 1,333. It has a town government, an elementary school, a fire department and a United States Post Office (zip code 24290). It has a cable television system separate from that serving the nearby larger city of Kingsport. It has a number of commercial establishments and service providers as shown on Exhibit A, including two automobile dealers, a floor coverings dealer, five markets/convenience stores, three banks, a florist, a nursery and garden center, two fuel/oil distributors, two funeral homes, three furniture dealers, three insurance agencies, a manufactured home dealer, a trailer dealer, a nursing home, a medical clinic, three drug stores, a tobacco warehouse and a self-storage facility.

4. Workplace of Local Residents (Factor 1). We could not find statistics for Weber City alone; however, the United States Bureau of the Census reports worker migration statistics on a county by county basis¹. According to the 2000 Census, Scott County had a total population of 23,403, of whom 9,054 are employed. The counties or Virginia independent cities where these people work are as follows (only those jurisdictions where 50 or more Scott County residents work are listed):

Jurisdiction	Number of Workers	Percentage of Total
Sullivan Co., TN	3,625	40.0%
Scott Co., VA	3,578	39.5%
Washington Co., TN	352	3.9%
Wise Co., VA	348	3.8%
Hawkins Co., TN	314	3.5%
Washington Co., VA	168	1.9%
Lee Co., VA	127	1.4%
Norton (City), VA	104	1.1%
Russell Co., VA	93	1.0%
Bristol (City), VA	71	0.7%

5. Kingsport, Tennessee is located mostly in Sullivan County, Tennessee, with a small western portion located in Hawkins County, Tennessee. According to the Census, a total

¹See <http://www.census.gov/population/www/cen2000/commuting.html#VA>

of 43.5% of Scott County workers work in either Sullivan or Hawkins County. 39.5% of them stay home and work in Scott County, Virginia. According to the 2000 Census, there were 5,110 jobs in Scott County, 3,578 of which were held by Scott County residents, or 70.0% of the total.

6. Local Media Serving Weber City (Factor 2). There is a local weekly newspaper serving all of Scott County, including Weber City, the "Scott County Virginia Star", which is published every Wednesday. According to the newspaper's website (<http://www.virginiastar.net>):

With more than 100 years of continuous service to the Scott County community, the Scott County Virginia Star has a weekly readership of over 21,000 loyal readers in Scott County and the surrounding area. The Scott County Virginia Star was founded in 1902, and has consistently placed among the 3 largest weekly papers within the state of Virginia.

7. Local Perception (Factor 3). While a number of vital services (i.e., hospitals, shopping centers and the regional commercial airport) are located either in Kingsport or adjacent communities in Tennessee, Weber City is in a different state—Virginia. Weber City's county and town government, state and local laws, school system and telephone company are different from those in Kingsport. Weber City is in a different congressional district from Kingsport, and elects state legislators who travel to Richmond, not Nashville. So, while Weber City is in close

proximity to Kingsport, it has a number of key differences from Kingsport.

8. Furthermore, the local topography establishes Weber City as a separate and distinct community, not only from Kingsport but even from other communities in Scott County. Weber City is situated on the north bank of the North Fork of the Holston River, and is further separated from Kingsport by a mountain called Long Ridge--the only road linking Weber City with Kingsport is U.S. Highway 23, which passes through a gap in that mountain in close proximity to the Virginia-Tennessee state line. Weber City is further separated from nearby Gate City by Clinch Mountain--US 23, which links Weber City and Gate City, winds through a water gap that separates Clinch Mountain from another mountain, Pine Ridge, located to the east of Clinch Mountain.

9. Weber City's Own Local Government (Factor 4). Weber City is an incorporated town and has an elected mayor and town council. It is located in Scott County, which elects a county-wide Board of Supervisors and has its own school board. Additionally, Weber City is part of Virginia's 9th Congressional District, 40th State Senate District and 1st House of Delegates District. None of these governmental bodies or legislative districts include Kingsport, Tennessee. Also, Weber City is located in the

Moccasin Gap Sanitation District, which does not include Kingsport.

10. Post Office and Telephone Book (Factor 5). Weber City has its own post office, zip code 24290. The Scott County Telephone Co-op publishes a telephone book which includes listings for Weber City.

11. Commercial Establishments, Health Facilities and Transportation Systems (Factor 6). Weber City has commercial establishments as noted in paragraph 3 above and listed in Exhibit A. Scott County has its own chamber of commerce, separate from that in Kingsport. It has a nursing home, the Brian Center, and, as shown in Exhibit A, a number of doctors and an Urgent Care Center. It does not have a mass transit system; it is located on U.S. 23, a major north-south highway; and the CSX Railroad's Clinchfield line runs through Weber City.

12. Local Advertising Market (Factor 7). As it is located in Scott County, Weber City is located in Nielsen's "Tri-Cities TN-VA" Designated Market Area (DMA). Arbitron includes Scott County in its Johnson City-Kingsport-Bristol "radio metro market". As noted above, however, Scott County has existing local media, including the weekly newspaper "Scott County Virginia Star" and AM radio stations in Gate City (WGAT) and Duffield (WDUF).

13. Reliance on Metropolitan Area for Services (Factor 8). Weber City has its own police and fire departments and its own elementary school (older students attend Gate City Middle School and High School, north of Weber City). Weber City is home to the "Regional Adult Education Center" which serves Scott, Lee and Wise counties and the city of Norton in southwest Virginia, as well as the Scott County "Headstart" and special education programs. Weber City and surrounding areas in Scott County are served by the STE Cablevision cable television system, which is separate from the Charter cable system serving Kingsport and vicinity. Weber City and surrounding areas in Scott County are served by the Moccasin Gap Sanitation District. Scott County operates its own public library.

Discussion

14. In the **Report and Order in MM Docket No. 99-244**, *supra*, at ¶6, the Commission determined that Weber City is a community for allotment purposes. Further, although Weber City is roughly 5 miles from the center of Kingsport, Tennessee, the Commission found that, applying the principles set down in **Faye and Richard Tuck**, 3 FCC Rcd 5374 (1988), that the allocation of Channel 274C3 at Weber City would be a "first local service". *Id.* at ¶8.²

²Paragraph 8 of the **Report and Order in MM Docket No. 99-244** states (the call letters WSEH have been changed to WVEK-FM):

15. As demonstrated in the updated **Tuck** showing contained herein, nothing that has occurred between 1999 and 2006 has vitiated Weber City's standing as "sufficiently independent from the central city of the Urbanized Area to be credited with a first local service for purposes of comparison under the FM allotment priorities". Not only are factors 3, 4, 5, 6 and 8 still present and in Weber City's favor, but we would also submit that factors 1 and 2 are in Weber City's favor. As to factor 1, 39.5% of Scott County workers work in Scott County. This is a substantial number of workers staying at home, given that there are three medium sized industrial cities (Bristol, Kingsport and Johnson City) within 25 miles of Weber City. As to factor 2, Scott County has its own weekly newspaper that covers news and events and sells advertising space to local businesses in Weber City.

16. It is settled law at the Commission that, when the Commission makes a determination that a geographic location

We further believe that the reallocation to Weber City triggers priority (3) as a first local service. Although Weber City is located outside the Kingsport, Tennessee-Virginia Urbanized area, Station WSEH(FM)'s 70 dBu signal will encompass 100% of that Urbanized area, and, as a result, petitioner provided a Tuck showing that it should be credited with a first local service and that the local stations in the Kingsport, Tennessee-Virginia Urbanized Area should not be attributed to Weber City. We have reviewed that showing and agree that Weber City is sufficiently independent from the central city of the Urbanized Area to be credited with a first local service for purposes of comparison under the FM allotment priorities. We base this finding on the presence of the majority of the eight factors on interdependence outlined in the Tuck test. [footnote omitted] Of those eight factors, we find that petitioner has satisfied factors (3), (4) (5) (6) and (8). No information was given for factors (1), (2) or (7). While a first local preference is not dispositive on the criteria of signal population and size of the suburban community relative to the adjacent city, we note that the city boundaries between Weber City and Kingsport (population 44,905) are less than five miles.

is a community for licensing purposes, subsequent parties before the Commission are entitled to rely on that determination. **Sunshine Broadcasting, Inc.**, 101 FCC 2d 476 (Rev. Bd. 1985), *review denied*, 1 FCC Rcd 174 (1986), *aff'd by judgment sub nom. L.B.C., Inc. v. FCC*, 865 F.2d 1329 (D. C. Cir. 1988) (determination that Fort Myers Villas, Florida was a community for licensing purposes in a rulemaking proceeding was binding on parties in a subsequent comparative hearing proceeding where there were different communities specified under the old "10 mile Rule"). In this case, after the FCC's Policy and Rules Division had determined that the Fort Myers Villas CDP was a community for licensing purposes, a comparative broadcast hearing was held where substantial evidence was entered that Fort Myers Villas was nothing more than a housing subdivision adjacent to the region's largest city, Fort Myers. All of this evidence notwithstanding, the Commission ruled that Fort Myers Villas was a community for licensing purposes, and the United States Court of Appeals for the District of Columbia Circuit affirmed.

17. As nothing has changed with respect to Weber City, it is respectfully submitted that Weber City is entitled to be found to be a community for licensing purposes and that WVEK-FM is entitled to relocate there.

Conclusion

18. Weber City, Virginia has been previously determined by the Commission to be eligible for an FM allotment, and the Commission has also previously determined that Channel 274C3 could be allotted to Weber City under the rule of **Faye and Richard Tuck**, *supra*. As demonstrated above, Weber City satisfies at least 5 (if not 7) criteria of the 8 point **Tuck** test. The allocation of Channel 274C3 works from a technical standpoint consistent with Sections 73.207 and 73.315 of the Commission's Rules, so long as Channel 263A is substituted for Channel 274A at Glade Spring, Virginia, and the present operating frequency for WOLD-FM, Channel 273A, is restored into the FM Table of Allotments, which was the *status quo ante* MM Docket No. 99-244. Cumberland, Kentucky will continue to have its own local broadcast outlet, WCPM(AM). As has been demonstrated herein, the public interest, convenience and necessity would be well served by (1) a first local broadcast service at Weber City, Virginia and (2) a more efficient use of the broadcast spectrum on Channel 274, while an existing allotment at Glade Spring, Virginia is preserved, and WOLD-FM at Marion, Virginia will be able to continue to operate on its existing channel.

WHEREFORE, JBL Broadcasting, Inc. urges that its Petition for Rulemaking **BE GRANTED**, that Channel 274 **BE**

REALLOTTED from Cumberland, Kentucky to Weber City, Virginia and upgraded to Class C3 status, and that the changes to the FM Table of Allotments at Glade Spring and Marion, Virginia proposed herein **BE ALLOWED**.

Respectfully submitted,

JBL BROADCASTING, INC.

By



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Its Attorney

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January 9, 2006

EXHIBIT A

WEBER CITY BUSINESSES

Automotive

Keith's Auto Sales
NAPA Auto Parts
Roberts Tire & Recapping
T & T Auto Sales

Banks

Bank of Scott County
New People's Bank
Farmers & Miners Bank

Cemetery

Holston View Cemetery

Clothing/Shoe Stores

Affordable Uniform Shop
Johnny's Shoe Store and Repair
The Wardrobe

Dry Cleaning/Laundry

Weber City Cleaners
Weber City Speedwash Coin Laundry

Finance/Loan Companies

American General Financial Services
PDQ Cash Advance
Southern Finance Corp.

Florists/Garden Centers

Enterprise Nursery and Garden Center
Weber City Florist

Food Markets/Convenience Stores

Food City
Hutchins Bros. Meat Market
Quik Stop Market
Red Roof Discount Cigarette Center
White's Fresh Foods

Fuel/Oil Dealers

Addington Oil Company
Frazier & Mann Fuel Oil

Funeral Homes

Colonial Funeral Home
Scott County Funeral Home, Inc.

Furniture Stores

Furniture Brokers
Rhoton & Smith Furniture Co.
Weber City Home Furnishings

Energy Firms

Coal Energy Resources
Enterprise Gas

Health Care

Steven M Adkins, M.D.
Brian Center Health & Rehabilitation/Scott Co.
Franklin Ellis, D.C.
William D. Fisher, O.D.
HMG Urgent Care Center
Holston Medical Group
Virginia Center for Integrative Medicine
Larry T. Wilson, M.D.

Heating/Cooling Services

A & G Heating and Cooling
Gilliam's Heating and Cooling

Home Building/Improvement/Services/Lumber

Bowling's Carousel Floor & Window Treatments
Scott County Lumber & Hardware Co., Inc.
Weber City Septic Tank & Concrete Co.
Ronnie Tipton Builders, Inc.

Insurance/Real Estate

Deskins Real Estate & Insurance
Howard Real Estate
Keith Insurance Agency
Nationwide Insurance/Doc Whitley Agency

Personal Grooming Services

Changes Hair Design
Dewey's Style Shop
Gillenwater Barber Shop
Holston Barber Shop
New Image Hair & Nail Salon

Pharmacies

Food City Pharmacy
Pharmerica
Weber City Drug Center

Restaurants

Dawg House
Gasthaus Edelweiss
Wendy's Old Fashioned Hamburgers

Trailer/Modular Home Sales

CJS Trailer Sales
W. E. McConnell & Son Nationwide Home Dealers

Warehouse/Storage

A & M Enterprise Mini Storage
Farmer's Big Star Tobacco Warehouse

Miscellaneous

Bellamy Manufacturing & Repair Co.
Big Break
Cash Company of Virginia
Dean's Tax Center
Gold & Things
Bill G. Hilton, Auctioneer
Lazy Time Pickin Parlor
Murray's Trading Post
S & S Interprises
Stateline Graphics

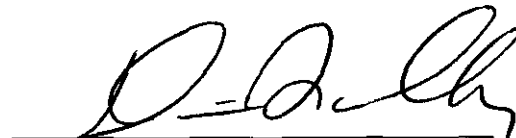
WEBER CITY CHURCHES

First Baptist Church of Weber City
Jenkins Evangelistic Association
Sallie's Chapel Missionary Baptist Church
Weber City Church of God

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing "Comments, etc." was served by first-class United States mail, postage prepaid, on this 9th day of January, 2006 upon the following:

Emerald Sound, Inc.
P.O. Box 1047
Marion, VA 24354
Licensee of WOLD-FM


Dennis J. Kelly